

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

ALA LEE PROVOST

§

VS.

§

CIVIL ACTION NO. 1:08cv377

NATHANIEL QUARTERMAN

§

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Ala Lee Provost, an inmate confined at the Huntsville Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be dismissed as barred by the applicable statute of limitations.

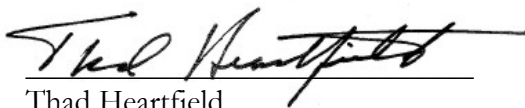
The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b). After careful consideration, the court concludes petitioner's objections should be overruled. Petitioner has not shown exceptional circumstances existed such as to warrant equitable tolling for the excessive delay in this case. Further, concerning petitioner's claim of new evidence asserted in his objections, the factual predicate of the claim was known to him or could have been discovered through the exercise of due diligence at the time of trial. Accordingly, the petition should be dismissed as barred by the applicable statute of limitations.

O R D E R

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

**SIGNED** this the **2** day of **April, 2009**.

  
Thad Heartfield  
United States District Judge